

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X 11 Civ. 622 (ERK)(MDG)  
DOUGLAS ALFORD,

Plaintiff,

v.

DECLARATION OF  
WALE MOSAKU

THE CITY OF NEW YORK, POLICE  
OFFICER DANIEL GONG (Shield # 3785),  
POLICE OFFICER CALEEF MCLEAN  
(Tax Registration # 942157), and POLICE  
OFFICERS JOHN DOE 1-8,

Defendants.

-----X

I, WALE MOSAKU, declare pursuant to 28 U.S.C. §1746, that the following is true and correct:

1. I am the principal of the Law Offices of Wale Mosaku, P.C., attorneys for the plaintiff in the above-captioned case.
2. I submit this declaration in opposition to the defendants' motion brought pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, wherein they seek an Order from the Court dismissing all of the plaintiff's federal and state law claims with prejudice.
3. I am familiar with the facts and circumstances herein, based upon communications with the plaintiff; and books and records maintained by my office, including but not limited to transcripts of hearings and/or trials previously taken of the plaintiff and/or defendant(s) that are pertinent to the matter.

4. A true copy of the Kings County Criminal Court complaint against the plaintiff, with respect to his August 13, 2010 arrest by defendant Caleef McClean<sup>1</sup>, is annexed hereto as Exhibit "1".
5. A true and correct copy of the Notice of Claim that was filed by the plaintiff on October 18, 2010, is annexed hereto as Exhibit "2".
6. True and correct excerpts from the transcript of the "50-H" hearing of the plaintiff, held on January 31, 2011, are annexed hereto as Exhibit "3".
7. A true and correct copy of the transcript of the plaintiff's criminal court trial, which was held on November 16, 2011, pertaining to his arrest on August 13, 2010 by defendant McClean, is annexed hereto as Exhibit "4".

Dated: Brooklyn, New York  
February 23, 2012

/s/

---

WALE MOSAKU

---

<sup>1</sup> Inadvertently named in this lawsuit as "Caleef McLean".

# Exhibit 1

CRIMINAL COURT OF THE CITY OF NEW YORK  
PART APAR COUNTY OF KINGS

015X  
ATTORNEYS  
FIDELITY  
STATE OF NEW YORK  
COUNTY OF KINGS

2010KN087224



THE PEOPLE OF THE STATE OF NEW YORK

V

DOUGLAS ALFORD

LEGAL ASSISTANT ALFRED RIZZO OF THE KINGS COUNTY DISTRICT ATTORNEY'S OFFICE SAYS THAT ON OR ABOUT AUGUST 13, 2010 AT APPROXIMATELY 03:05 PM AT THE SOUTH WEST CORNER OF BROADWAY & MARCUS GARVEY BOULEVARD COUNTY OF KINGS, STATE OF NEW YORK,

THE DEFENDANT COMMITTED THE OFFENSE(S) OF:

PL 275.35 FAILURE TO DISCLOSE THE ORIGIN OF A RECORDING IN  
THE SECOND DEGREE  
AC 20-453 UNLICENSED GENERAL VENDOR

IN THAT THE DEFENDANT DID:

ACT AS A GENERAL VENDOR WITHOUT FIRST HAVING OBTAINED A LICENSE IN ACCORDANCE WITH THE NEW YORK CITY ADMINISTRATIVE CODE; FOR COMMERCIAL ADVANTAGE OR PRIVATE FINANCIAL GAIN, KNOWINGLY ADVERTISE OR OFFER FOR SALE, RESALE, OR RENTAL, OR SELL, RESELL, OR RENT, OR POSSESS FOR SUCH PURPOSES, A RECORDING THE COVER, BOX, JACKET OR LABEL OF WHICH DID NOT CLEARLY AND CONSPICUOUSLY DISCLOSE THE ACTUAL NAME AND ADDRESS OF THE MANUFACTURER OR THE NAME OF THE PERFORMER OR PRINCIPAL ARTIST. THE OMISSION OF THE ACTUAL NAME AND ADDRESS OF THE MANUFACTURER, OR THE OMISSION OF THE NAME OF THE PERFORMER OR PRINCIPAL ARTIST, OR THE OMISSION OF BOTH, SHALL CONSTITUTE THE FAILURE TO DISCLOSE THE ORIGIN OF A RECORDING..

THE SOURCE OF DEPONENT'S INFORMATION AND THE GROUNDS FOR DEPONENT'S BELIEF ARE AS FOLLOWS:

THE DEPONENT IS INFORMED BY THE SUPPORTING DEPOSITION OF POM CALEEF R MCCLEAN SHIELD NO.10690, OF 079 COMMAND , THAT, AT THE ABOVE TIME AND PLACE, INFORMANT OBSERVED THE DEFENDANT DISPLAY AND OFFER FOR SALE MULTIPLE CDS ON WHICH THERE WAS NO CLEAR INDICATION OF THE ORIGIN OF THE RECORDINGS.

SPECIFICALLY, DEPONENT IS INFORMED BY THE ABOVE-MENTIONED SUPPORTING DEPOSITION THAT INFORMANT OBSERVED DEFENDANT STANDING FOR A PERIOD OF TWO MINUTES IMMEDIATELY BEHIND A FOLDING TABLE ON WHICH THE ABOVE-DESCRIBED MERCHANDISE WAS DISPLAYED.

DEPONENT IS FURTHER INFORMED BY THE ABOVE-MENTIONED SUPPORTING DEPOSITION THAT DEFENDANT WAS UNINTERRUPTEDLY IN IMMEDIATE PROXIMITY TO THE MERCHANDISE, EXERCISED DOMINION AND CONTROL OVER THE MERCHANDISE, AND DID NOT LEAVE THE MERCHANDISE UNATTENDED DURING THE ENTIRE PERIOD OF INFORMANT'S OBSERVATION.

DEPONENT IS FURTHER INFORMED BY THE ABOVE-MENTIONED SUPPORTING DEPOSITION THAT INFORMANT OBSERVED DEFENDANT ARRANGING THE MERCHANDISE ON THE ABOVE-DESCRIBED DISPLAY AREA SO THAT IT WAS MORE VISIBLE TO PASSERS-BY.

DEPONENT IS FURTHER INFORMED BY THE ABOVE-MENTIONED SUPPORTING DEPOSITION THAT, AT THE TIME OF INFORMANT'S OBSERVATIONS, DEFENDANT WAS NOT DISPLAYING A LICENSE ISSUED BY THE DEPARTMENT OF CONSUMER AFFAIRS, AND DID NOT PRODUCE ONE WHEN ASKED TO DO SO.

DEPONENT IS INFORMED BY THE SUPPORTING DEPOSITION OF RAMON RIVERA, INTERN FOR THE RECORDING INDUSTRY ASSOCIATION OF AMERICA IN NEW YORK, THAT BASED ON THE POLICE OFFICER'S DESCRIPTION AND THE INFORMANTS OWN SPECIALIZED TRAINING THAT THE SEIZED-RECORDINGS ARE PIRATICAL AND FAIL TO DISCLOSE THE ACTUAL NAME AND ADDRESS OF THE MANUFACTURER.

SPECIFICALLY, DEPONENT IS INFORMED BY THE ABOVE-MENTIONED SUPPORTING DEPOSITION THAT THE CDS' PACKAGING DOES NOT INCLUDE THE TRUE NAME AND ADDRESS OF THE MANUFACTURER.

FALSE STATEMENTS MADE IN THIS DOCUMENT ARE  
PUNISHABLE AS A CLASS A MISDEMEANOR PURSUANT

9/16/2010 11:48:20 AM

K10677623

Arrested: 08/13/2010 15:10

# Exhibit 2

IN THE MATTER OF THE CLAIM OF

DOUGLAS ALFORD

against

THE CITY OF NEW YORK, POLICE OFFICER DANIEL GONG (Shield # 3785)<sup>1</sup>,  
POLICE OFFICER CALEEF MCLEAN (Tax Registration # 942157)<sup>2</sup>, and POLICE  
OFFICERS JOHN DOE 1-8

RECEIVED  
CITY OF NEW YORK  
2010 OCT 18 PM 1:12  
CLERK OF THE COURT  
CENTRAL MANHATTAN  
BUR. INF. UNIT

TO: CORPORATION COUNSEL OF THE CITY OF NEW YORK;  
COMPTROLLER OF THE CITY OF NEW YORK.

PLEASE TAKE NOTICE that the undersigned Claimant hereby makes claim and demand against the City of New York, as follows:

1. The name and post-office address of the claimant and claimant's attorney is:

DOUGLAS ALFORD  
1328 Halsey Street, #1L  
Brooklyn, New York 11237

Law Offices of Wale Mosaku, P.C.  
25 Bond Street, 3<sup>rd</sup> Floor  
Brooklyn, New York 11201

2. The nature of the claim(s):

Damages for the False Arrest, False Imprisonment, Excessive Force and Violation of the Civil Rights of the claimant.

3. The time when, the place where and the manner in which the claim(s) arose:

- (a) On or about August 5, 2010, at approximately 5:00 p.m., while the claimant was lawfully in front of the premises described as 210 Joralemon Street, Brooklyn, New York, in the County of Kings, City of New York, the claimant was falsely arrested without probable cause by POLICE OFFICER DANIEL GONG (Shield # 3785) (hereinafter "Gong") and POLICE OFFICERS JOHN DOE 1-4 of, upon information and belief, the 84<sup>th</sup> Precinct of the Police Department of the City of New York.  
At the above-referenced time and place, the plaintiff, who was lawfully engaged in the sale of mixed music Compact Discs (CDs), was approached by

<sup>1</sup> Whose Tax Registration # is 938588. And who, upon information and well-founded belief, was assigned to the 84th police precinct at the time of the 08/05/2010 incident.

<sup>2</sup> Who, upon information and well-founded belief, was assigned to the 79th police precinct at the time of the 08/13/2010 incident.



Page 2  
Douglas Alford  
Notice of Claim(s)

Gong and asked if he had a "license". The claimant handed Gong his driver's license, and guessing that Gong was really inquiring about some sort of vendor's license, also informed Gong that he was not required to have a vendor's license, and as proof, handed Gong a "Decision and Order" dated July 1, 2010, wherein, in a prior action, a New York City Administration Law Judge assigned to the New York City Environmental Control Board, had determined that the claimant, who had been similarly accused of selling CDs without a vendor's license, was not required to have a general vendor's license on the basis that he was a "First Amendment Vendor".

Gong, ignored said "Decision and Order", instructed the claimant not to move, made a few phone calls over a period of 20 minutes, and upon concluding said phone calls, told the claimant to "turn around because you are under arrest". Claimant was then handcuffed and placed in a car that was operated by a female police officer, and transported to the 84th police precinct. The handcuffs were secured too tightly to the plaintiff's wrists, resulting in pain, suffering and numbness. The claimant's complaints about the unnecessarily tightly secured handcuffs were ignored by Gong.

Upon arrival at the 84th precinct the claimant was photographed and fingerprinted. At approximately 12:30 a.m. on August 6, 2010, the claimant was transported to the Brooklyn House of Detention where he was searched. At approximately 11:00 a.m. on August 6, 2010, the claimant was transported to "central booking" located within the NYC Criminal Courthouse building at 120 Schermerhorn Street, Brooklyn, New York 11201.

At approximately 11:30 a.m. on August 6, 2010, the claimant was arraigned before a Judge on charges that he had committed the misdemeanor offense of being an "Unlicensed General Vendor" (A.C. 20-453). The claimant was released on his own recognizance. On October 6, 2010, when the claimant returned to Court in defense of said charges, the matter was adjourned in contemplation of dismissal (ACD), but immediately sealed on the same day. The arrest number was "K10674929-Y". The docket number was "2010KN062529".

- (b) On or about August 13, 2010, at approximately 03:00 p.m., while the claimant was lawfully in front of the premises described as 789 Broadway, Brooklyn, New York, in the County of Kings, City of New York, he was unlawfully arrested without probable cause by POLICE OFFICER CALEEF MCLEAN (Tax Registration # 942157) (hereinafter "McLean") and POLICE OFFICERS JOHN DOE 1-4 of, upon information and belief, the 79<sup>th</sup> Precinct of the Police Department of the City of New York.

Page 3  
Douglas Alford  
Notice of Claim

At the above-referenced time and place, the plaintiff, who was lawfully engaged in the sale of mixed music Compact Discs (CDs), was approached by Mclean and Police officers John Doe 5-8 and asked for a "license". The claimant handed Mclean and Police officers John Doe 5-8 his driver's license, and guessing that Mclean and Police officers John Doe 5-8 were really inquiring about some sort of vendor's license, also informed Mclean and Police officers John Doe 5-8 that he was not required to have a vendor's license, and as proof, handed Mclean and Police officers John Doe 5-8 a "Decision and Order" dated July 1, 2010, wherein, in a prior action, a New York City Administration Law Judge assigned to the New York City Environmental Control Board, had determined that the claimant, who had been similarly accused of selling CDs without a vendor's license, was not required to have a general vendor's license on the basis that he was a "First Amendment Vendor".

Mclean and Police officers John Doe 5-8, ignored said "Decision and Order", and informed the claimant that the CDs he was selling "looked suspect" and that he was under arrest. Said officers then told the claimant that they did not want to take all his merchandise, and that the claimant should give said merchandise to someone he could trust. The claimant then informed the officers that he had storage three blocks away from the location of his arrest. The officers then told the claimant that they would drive him to the storage facility, and did so. The officers then stood by as the claimant put away his merchandise. The claimant was told to put his wallet, loose keys and other personal items in his storage, if he did not want those items confiscated, and then give the key to his storage to someone he could trust. Claimant complied with the officers instructions. The officers then walked the claimant to a van and placed handcuffs on him. The claimant was then driven to the 79th precinct.

At the 79th precinct, the claimant was photographed and fingerprinted. The claimant was then given a "desk Appearance Ticket", and instructed to appear in Court on September 16, 2010. The claimant was released from the precinct at approximately 05:30 p.m. The claimant forgot to appear at NYC Criminal Court on 09/16/2010, and fearful that a warrant had been issued for his arrest, subsequently reported to said court, whereupon he was informed that there was no record of a warrant. The claimant was instructed by the court personnel to "forget it" if he did not receive any paperwork from court within the next three months.

However, when the claimant reported to Criminal Court in defense of the above-referenced 08/05/2010 arrest charges on October 6, 2010, he requested



Page 4

Douglas Alford  
Notice of Claim

for, and obtained a document from said court, wherein it was stated that the Kings County District Attorney had declined to prosecute him, with respect to the 08/13/2010 charges. The arrest number was "K10677623".

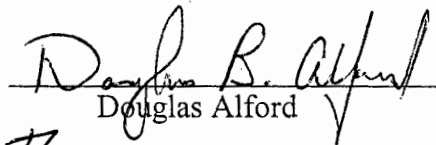
4. The items of damage or injury claimed are:

Plaintiff suffered and still suffers Loss of Liberty, confinement, Grievous Mental Anguish and Emotional Distress, and Psychological Disability and Distress. As a result of the foregoing, claimant has necessarily been caused out of pocket expenses, including loss of earnings.

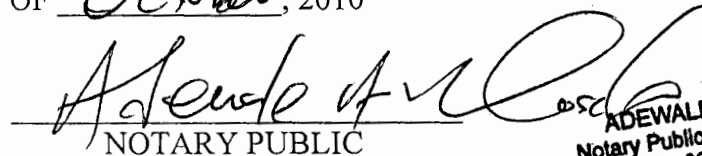
TOTAL AMOUNT CLAIMED: ONE MILLION DOLLARS (\$1,000,000.00)

The undersigned claimant therefore presents this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant intends to commence an action on this claim.

Brooklyn, New York  
Dated: October 8, 2010

  
Douglas Alford

SWORN TO BEFORE ME THIS 8<sup>TH</sup> DAY  
OF October, 2010

  
NOTARY PUBLIC

ADEWALE A. MOSAKU  
Notary Public State of New York  
No. 02M06018153  
Qualified in Kings County  
Commission Expires January 4, 2014

LAW OFFICES OF WALE MOSAKU, P.C.  
ATTORNEYS FOR CLAIMANT  
25 BOND STREET, 3<sup>RD</sup> FLOOR  
BROOKLYN, NEW YORK 11201  
(718) 243-0994

# Exhibit 3

1

2

DOUGLAS ALFORD

3

2010PI038758

4

(015-220)

5

-----X

6

In the Matter of the Claim of:

7

DOUGLAS ALFORD,

8

Claimant,

9

-against-

10

THE CITY OF NEW YORK, POLICE OFFICER DANIEL

11

GONG, (SHIELD 3785), POLICE OFFICER CALEEF

12

MCLEAN (Tax Registration #942157) and POLICE

13

OFFICERS JOHN DOE 1-8,

14

Respondent.

15

-----X

16

189 Montague Street

17

Brooklyn, New York

18

January 31, 2011

19

2:20 P.M.

20

21

50-h HEARING of DOUGLAS ALFORD, the Claimant

22

herein, taken by the Respondent, pursuant to Section

23

50(h) of the General Municipal Law, held at the

24

above-noted time and place before a Notary Public of

25

the State of New York.

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A P P E A R A N C E S:

WALE MOSAKU, ESQ,  
Attorneys for Claimants  
25 Bond Street  
Brooklyn, New York 11201

JANE N. BARRETT & ASSOCIATES, LLP  
Attorneys for Respondents  
353 Second Street  
Suite 1R  
Brooklyn, New York 11215

BY: JANE BARRETT, ESQ.  
CLAIM NO.: 2010PI038758

1

2 DOUGLAS ALFORD,

3 The witness herein, having first been duly  
4 sworn by June Wagner, a Notary Public in and for the  
5 State of New York, was examined and testified as  
6 follows:

7 EXAMINATION BY JANE BARRETT, ESQ.:

8 Q Please state your name for the record.

9 A Douglas B. Alford.

10 Q What is your address?

11 A 1328 Halsey Street, apartment 1L,  
12 Brooklyn, New York 11237.

13 MS. BARRETT: Mark these please.

14 (Whereupon, a desk appearance ticket  
15 was marked as Respondent's Exhibit A for  
16 identification, as of this date.)

17 (Whereupon, a court document was  
18 marked as Respondent's Exhibit B for  
19 identification, as of this date.)

20 (Whereupon, a court document was  
21 marked as Respondent's Exhibit C for  
22 identification, as of this date.)

23 (Whereupon, a property invoice was  
24 marked as Respondent's Exhibit D for  
25 identification, as of this date.)

1 Douglas Alford

2 Q I see that this arrest stems from the  
3 sale of the CDs?

4 A That's correct.

5 Q How long have you been selling CDs?

6 A At that particular location?

7 Q No, just in general.

8 A Two years.

9 Q What are the CDs that you sell?

10 A Music CDs.

11 Q Is it your music, someone's else's or  
12 what?

13 A We buy the CDs from DJs that produce the  
14 CDs.

15 Q You are acting basically as a retailer,  
16 you buy them wholesale and you sell them retail?

17 A I was actually employed. I was employed  
18 at the time I was arrested. I was employed by  
19 Shaheb Productions.

20 Q What is Shaheb Productions?

21 A He was located in Brooklyn, one of the  
22 DJs.

23 Q What is his address?

24 A 308 -- I can't put his street name  
25 together. It's in Williamsburg, Brooklyn. The name



10

1 Douglas Alford

2 will come to me, I can't get the name right now.

3 Q Is Shaheb his first name?

4 A I believe his name is Wally Shaheb.

5 Q Wally Shaheb?

6 A Yes.

7 Q Are these secondhand CDs or are you  
8 selling new?

9 A They are produced by DJs.

10 Q What are Shaheb Production's role in the  
11 production of the CDs?

12 A He produces his own CDs and he also  
13 produces his own music.

14 Q When you say he produces his own music?

15 A He is an entertainer.

16 Q The CDs he is producing are his own  
17 music?

18 A His music among others.

19 Q What were the terms of your employment  
20 with him, did he pay you by the hour, by the CDs or  
21 something else?

22 A He paid by the piecework, by CD.

23 Q What was the rate of pay?

24 A \$2 per CD.

25 Q How long had you had that arrangement

1 Douglas Alford

2 with him?

3 A Approximately, a year.

4 Q At the time of this arrangement, were you  
5 selling CDs exclusively for him or did you have any  
6 other CDs?

7 A At the time of the arrest, I was selling  
8 CDs exclusively with him.

9 Q That was part of deal with him, you  
10 didn't sell for anybody else?

11 A Correct.

12 Q How long had you been selling CDs at this  
13 particular location?

14 A Approximately, a year.

15 Q A year?

16 A Approximately, yes.

17 Q On what kind of basis, five days a week,  
18 seven days a week?

19 A Five days.

20 MR. MOSAKU: What location are we  
21 talking?

22 THE WITNESS: 210 Joralemon.

23 Q That is the municipal building?

24 A That's correct.

25 Q What were your usual hours there?

1 Douglas Alford

2 A That was in Williamsburg, Brooklyn  
3 approximately within two blocks of Woodhull  
4 Hospital.

5 Q That was near Shaheb Productions?

6 A Yes, within the block from Shaheb.

7 Q On those two arrests did they involve the  
8 same officers?

9 A No, they did not.

10 Q Different officers?

11 A Yes.

12 Q On first arrest in August 5, 2010, that  
13 was the one in front of the municipal building?

14 A That's correct.

15 Q Your merchandise consisted solely of CDs?

16 A That's correct.

17 Q No DVDs, no pictures?

18 A No DVDs, no pictures.

19 Q Was your merchandise confiscated at that  
20 time?

21 A Yes.

22 Q Did you get it all back?

23 A Yes.

24 Q Was it in good condition or was it  
25 damaged at all?

1 Douglas Alford

2 handcuffed me and put me in the patrol car.

3 Q Were you subjected to any physical force  
4 in the application of the handcuffs?

5 A The handcuffs, first of all, the  
6 handcuffs were put on too tight and I mentioned to  
7 Officer Gong, would you lighten the handcuffs, they  
8 are kind of tight. He ignored me. He just was  
9 going about putting my merchandise together.

10 Q Were you subjected to any of the  
11 following forms of physical force, punching,  
12 hitting, kicking, slapping?

13 A No punching, kicking, hitting, slapping.

14 Q Were you put in the patrol car or van?

15 A Patrol car.

16 Q Did you suffer any injury in the process  
17 of being put into the patrol car?

18 A No.

19 Q Where did they take you?

20 A They took me to the 84 Precinct in the  
21 holding area.

22 Q Where is that?

23 A Gold Street, I believe.

24 Q Is that downtown Brooklyn?

25 A That's correct.

20

1 Douglas Alford

2 Q How long were you there?

3 A I was there until I would say about  
4 midnight.

5 Q Since about six hours?

6 A Yes.

7 Q Were you fingerprinted and photographed?

8 A Yes, I was.

9 Q During that time that you were in the 84  
10 Precinct on Gold Street, did you request any medical  
11 attention?

12 A I didn't request any medical attention  
13 although my left wrist had a red line from the  
14 handcuffs.

15 Q Are you left handed or right handed?

16 A I am left handed.

17 Q How long did it take for that to go away?

18 A At least a week.

19 Q Did you get any more information or  
20 explanation in the time you were at the precinct as  
21 to why you had been arrested?

22 A The only information I got was a friend  
23 of mine that said they heard Gong say something  
24 similar that he didn't like my attitude. That's  
25 only feedback that I got.

1 Douglas Alford

2 A Per day working at Joralemon. It was  
3 half of that working at the other location.

4 Q Did you report any of this on your income  
5 tax?

6 A Yes, I report this as my income, tax  
7 income.

8 Q All of it?

9 A I report my income.

10 Q Then there was another arrest just a week  
11 later, right?

12 A Yes.

13 Q What was the date of that one?

14 A I believe August 13th, a Friday so  
15 August 13th.

16 Q That was at the Broadway near Flushing  
17 location?

18 A 789 Broadway, yes.

19 Q Were you working for Shaheb or working  
20 for yourself?

21 A I was working for myself.

22 Q What happened?

23 A Three officers, I believe it was three  
24 officers, walked up to me and asked me for my  
25 license. Once again I told him I am not required to



26

1

Douglas Alford

2

have a license and I showed them that decision

3

order. They looked at it and basically said it

4

didn't mean anything to them.

5

Q Did they say why?

6

A No particular reason, they just said it

7

didn't -- they didn't understand what it was and it

8

didn't mean anything to them.

9

Q At this occasion on August 13th, did they

10

say that you couldn't sell the CDs at that

11

particular location or you can't sell them period

12

without a license?

13

A No. They said that the particular CDs

14

that I had looked suspect is what they told me.

15

Q Suspect meaning what, bootleg?

16

MR. MOSAKU: Did they say anything

17

else other than the word suspect.

18

A What was the term they used?

19

Q Copyright?

20

A No origin, something of origin on the

21

CDs. I said this CD says Shaheb Productions. This

22

CD says another thing, so what are you talking

23

about? He said all of them don't have it, I am

24

going to take these CDs and place you under arrest.

25

Q Were they indicating to you that they had

38

1

Douglas Alford

2

MS. BARRETT: The record is now

3

closed.

4

(Whereupon, the examination of

5

this witness was concluded at 3:11 P.M.)

6

\* \* \* \*

7

STATE OF NEW YORK )

8

) ss.:

9

COUNTY OF )

10

I have read the foregoing record of

11

my testimony taken at the time and place

12

noted in the heading hereof and I do

13

hereby acknowledge it to be a true and

14

correct transcript of same.

15

16

DOUGLAS ALFORD

17

Subscribed and sworn to before me

18

this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

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NOTARY PUBLIC

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1  
2 CERTIFICATION

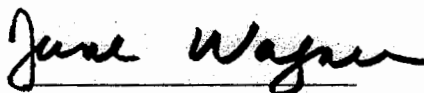
3  
4 I, June Wagner, a Notary Public of the State of  
5 New York, do hereby certify:

6 That the testimony in the within proceeding was  
7 held before me at the aforesaid time and place.

8 That said witness was duly sworn before the  
9 commencement of the testimony, and that the  
10 testimony was taken stenographically by me, then  
11 transcribed under my supervision, and that the  
12 within transcript is a true record of the testimony  
13 of said witness.

14 I further certify that I am not related to any of  
15 the parties to this action by blood or marriage,  
16 that I am not interested directly or indirectly in  
17 the matter in controversy, nor am I in the employ of  
18 any of the counsel.

19 IN WITNESS WHEREOF, I have hereunto set my hand  
20 this 11th day of February, 2011.

21  
22 

23 JUNE WAGNER  
24  
25

# Exhibit 4

1 CRIMINAL COURT OF THE CITY OF NEW YORK  
2 COUNTY OF KINGS: PART BTP2  
-----x

3 PEOPLE OF THE STATE OF NEW YORK,

4 - against -

DOCKET NO.  
2010KN087224

5 DOUGLAS ALFORD,

6 Defendant.

HEARING

7 -----x

8 120 Schermerhorn Street  
9 Brooklyn, New York 11201

10 November 16, 2011

11 B E F O R E:

12 HONORABLE SHAWN DYIA L. SIMPSON, JUDGE

13 A P P E A R A N C E S:

14  
15 CHARLES J. HYNES, ESQ.  
District Attorney, Kings County  
16 BY: SAMUEL DEPAOLA, ESQ.  
Assistant District Attorney  
17

18 JAMES MEADOWS, ESQ.  
Attorney for the Defendant  
19 125 Livingston Street  
20 Brooklyn, New York  
21  
22  
23

24 Alexis Fotiou  
Official Court Reporter  
25

## PROCEEDINGS

1 COURT OFFICER: Calendar No. 6, Douglas Alford.

2 MR. MEADOWS: On behalf of Mr. Alford, James  
3 Meadows, 125 Livingston Street. Good afternoon, your  
4 Honor.

5 MR. DEPAOLA: Samuel Depaola for the People.  
6 Good afternoon, your Honor.

7 MR. MEADOWS: Your Honor, I like to make an  
8 application at this time with Court's permission. It's  
9 been brought to my attention that this is a case regarding  
10 my client is being charged with Penal Law Section 275.35,  
11 failure to disclose the origin of a recording in the second  
12 degree and administrative code 20-453 unlicensed general  
13 vendor. It's been brought to my attention that the  
14 counterfeit DVDs -- CDs, excuse me, in this case the  
15 evidence was actually destroyed.

16 MR. DEPAOLA: That is correct, Judge. It was  
17 marked mistakenly by the arresting officer as peddler's  
18 property when it should have been marked arrest evidence.  
19 People are ready to proceed without the evidence as we do  
20 have the officer's independent recollection of the events.

21 THE COURT: If the whole thing is a origin isn't  
22 that an issue that I should decide?

23 MR. DEPAOLA: Yes, Judge, but we do have the  
24 officer's recollection that he will not recall seeing any  
25 origin of any manufacturer's name.



## PROCEEDINGS

1 THE COURT: Did you take photos?

2 MR. DEPAOLA: No photographs, Judge.

3 MR. MEADOWS: Your Honor, the People had a duty  
4 if they were to destroy it to take some type of photographs  
5 to document this incident.

6 MR. DEPAOLA: In the People's defense, your  
7 Honor, the defendant did bench warrant --

8 THE COURT: Okay, well listen, that has nothing  
9 to do with the fact of the case, that's another issue. But  
10 it's the People's responsibility and unfortunately it's  
11 really the police officer's responsibility but the people  
12 will have an adverse inference charge or whatever  
13 negativity on the fact that that is not available.

14 What is the offer?

15 MR. DEPAOLA: Violation, time served, Judge.

16 MR. MEADOWS: Your Honor, just to put on the  
17 record at one point the People did decline to prosecute  
18 this case. And it's my understanding when the People found  
19 out that my client had a filed a civil case against the  
20 City they brought back this case. They have not offered my  
21 understanding as to why this case is still on.

22 It's also my understanding that the People may  
23 have spent -- at least the City has spent a tremendous  
24 amount of money in resources regarding the civil which is  
25 why they didn't dismiss this case in the interest of

PROCEEDINGS

1 justice.

2 MR. DEPAOLA: I have no independent knowledge on  
3 that, Judge.

4 THE COURT: How many witnesses do you have?

5 MR. DEPAOLA: Two, Judge.

6 THE COURT: Would you be willing to do a  
7 combined?

8 MR. MEADOWS: Pardon me?

9 THE COURT: A combined hearing and trial.

10 MR. MEADOWS: Yes, your Honor, I would.

11 MR. DEPAOLA: I don't believe there are any  
12 hearings.

13 THE COURT: Okay. Would he take an ACD?

14 MR. MEADOWS: No, your Honor.

15 THE COURT: Not even with immediate sealing?

16 MR. MEADOWS: No, your Honor.

17 THE COURT: Second call. Have a seat.

18 \* \* \*

19 COURT OFFICER: Recalling No. 6, Douglas Alford.

20 MR. MEADOWS: Once again for Mr. Alford, James  
21 Meadows.

22 MR. DEPAOLA: Samuel Depaola once again for the  
23 People.

24 THE COURT: What are we doing in this case?

25 MR. DEPAOLA: We were going to stipulate to the

PROCEEDINGS

1 testimony from the representative of the Recording Industry  
2 Association of America. Counsel and I have looked over the  
3 stipulation and we have agreed to its terms.

4 MR. MEADOWS: That is correct.

5 THE COURT: All right, are we ready to proceed?  
6 What is the offer?

7 MR. DEPAOLA: A violation and time served.

8 MR. MEADOWS: Once again that offer is  
9 respectfully declined.

10 THE COURT: Even if it was an ACD it would be  
11 declined?

12 MR. MEADOWS: That is correct, your Honor.

13 THE COURT: All right, are we ready?

14 MR. MEADOWS: Yes, your Honor.

15 MR. DEPAOLA: People are ready.

16 MR. MEADOWS: Ready.

17 MR. DEPAOLA: Officer is outside.

18 THE COURT: Sit down, let's go. We are  
19 combining, correct?

20 MR. MEADOWS: That is correct.

21 THE COURT: Let's go.

22 MR. MEADOWS: Should this matter go past today I  
23 will request minutes, my client is indigent. I was  
24 assigned by 18-B.

25 THE COURT: Not a problem. Do we have openings?

## PROCEEDINGS

1 MR. DEPAOLA: Your Honor, this is a very straight  
2 forward case. You will see that the defendant was required  
3 to disclose certain things and that those things were not  
4 disclosed when asked of him.

5 In Kings County New York on August 13, 2010 the  
6 defendant was observed by the arresting officer an Officer  
7 McClean of the NYPD. He was observed selling various CDs  
8 behind a folded table. You will hear testimony from the  
9 officer that he did not remove himself from behind the  
10 table other than to rearrange the CDs in order to make them  
11 more sellable to the public.

12 You will see that these CDs had inserts in them  
13 containing the likeness of various recording artists  
14 including Jay Z, Jim Jones and Little Wayne. Also that the  
15 defendant when asked by the officer if he had a general  
16 vending license, he did not display one, did not say that  
17 he had one and nothing of the like.

18 I believe it is the defendant's defense that he  
19 is a first amendment protected vendor. The people will  
20 assert then that he is not and that he was selling  
21 parodical CDs and that the CDs are not protected under the  
22 first amendment or its auspices.

23 Also, your Honor, you will hear from the  
24 stipulated testimony presented that we have clearly  
25 delineated what is required of the CDs to be sold to the

## PROCEEDINGS

1 public. And clearly from the arresting officer's testimony  
2 you will see that these markings were not present and that  
3 the defendant was in fact violating the law in Kings County  
4 New York. Thank you, your Honor.

5 MR. MEADOWS: May I be heard, your Honor.

6 May it please the Court the people are right that  
7 this is a straight forward case. The first amendment  
8 allows people to sell certain merchandise on the street  
9 without a vendor's license. It's my understanding that it  
10 includes newspapers, magazines, CDs and DVDs.

11 Now the People are going to allege, your Honor,  
12 that CDs and DVDs would be concluded. However, parody  
13 DVDs, CDs wouldn't. The burden are on the People to prove  
14 that my client was selling or attempting to sell or  
15 presenting CDs and DVDs on the day of question I believe  
16 it's August 13th of 2010 here in Kings County, your Honor.

17 The problem, your Honor, is your Honor heard  
18 earlier since this is a bench trial is that the People  
19 destroyed their own evidence.

20 We will stipulate that John C. Castillo part of  
21 the Recording Industry Association of America is an expert  
22 in this field and he's knowledgeable of what is and what is  
23 not deemed parodied CDs DVDs. The last part of the  
24 stipulation which obviously will be read into evidence is  
25 that that individual does not have any knowledge whatsoever

## PROCEEDINGS

1           whether the defendant was selling pirated or unpirated CDs  
2           and DVDs. The burden is on the People to prove that my  
3           client was selling DVDs. The only issue is where those CDs  
4           are. The evidence will show as, your Honor, already knows  
5           is that the People destroyed their own evidence. The  
6           People will not be able to establish their case beyond a  
7           reasonable doubt and for all those reasons, your Honor, I  
8           believe my client should be found not guilty.

9           THE COURT: Call your first witness.

10          MR. DEPAOLA: People would now like to call  
11          officer Caleef McClean.

12          COURT OFFICER: Do you swear or affirm the  
13          testimony you are about to give here today is the truth?

14          THE WITNESS: Yes.

15          THE COURT: State your name, spelling your first  
16          and last name, shield, rank and command.

17          THE WITNESS: First name Caleef, C-a-l-e-e-f,  
18          last name M-C-C-L-E-A-N, command 079, ID 10690.

19          COURT OFFICER: You can have a seat.

20          THE COURT: Go ahead.

21          DIRECT EXAMINATION

22          BY MR. DEPAOLA:

23           Q. Good afternoon, Officer McClean, can you please state  
24           your name, shield and command for the record.

25           A. Officer McClean 79 Precinct shield 10690.



P.O. MCCLEAN - DIRECT - PEOPLE

1 Q. By whom are you employed?

2 A. NYPD, New York City Police Department.

3 Q. How long have you been employed by the New York City  
4 Police Department?

5 A. Five years and about three months.

6 Q. What is your current assignment?

7 A. My current assignment is called conditions. I am in  
8 the conditions unit.

9 Q. Was that your assignment at the time of the incident?

10 A. Yes.

11 Q. How long have you been assigned to the conditions?

12 A. About three years.

13 Q. Directing your attention to 3:05 p.m. on August 13,  
14 2010 at the corner of Broadway and Marcus Garvey Boulevard,  
15 where were you at that time?

16 A. I was in a police van, marked police van. Right in  
17 front of 760 Broadway which is right on the corner of Garvey and  
18 Broadway.

19 Q. What county is that in?

20 A. Kings County.

21 Q. Did you observe the defendant here today?

22 A. Yes.

23 Q. From inside the van?

24 A. Yes.

25 Q. Just so we can identify who we are speaking about, do

P.O. MCCLEAN - DIRECT - PEOPLE

1 you see the person you arrested that day inside the courtroom  
2 today?

3 A. Yes.

4 MR. MEADOWS: Objection, your Honor.

5 MR. DEPAOLA: Please identify him by a piece of  
6 clothing.

7 MR. MEADOWS: Objection foundation. I understand  
8 it's a bench trial but before he arrested the individual it  
9 had to have been some type of story on how he arrested.

10 THE COURT: I will allow it before you get to  
11 that. Well, before the arrest -- well, just back up.

12 Q. Back to my previous question, did you observe the  
13 defendant from inside the van?

14 THE COURT: Not defendant. Did you observe the  
15 individual.

16 Q. The individual, Mr. Douglas Alford?

17 A. Yes, I was in the police van for about five minutes  
18 observing the defendant.

19 THE COURT: Off the record.

20 (Whereupon, there is a discussion held off the  
21 record.)

22 THE COURT: Back on.

23 Q. Did you see an individual then selling or appeared to  
24 be selling CDs behind a folding table?

25 MR. MEADOWS: Objection.

P.O. MCCLEAN - DIRECT - PEOPLE

1 THE COURT: Don't worry about it.

2 Did you see that?

3 THE WITNESS: Yes, I did.

4 Q. Is that person here today?

5 A. Yes.

6 Q. Can you please identify that individual via an article  
7 of clothing please?

8 A. Wearing I would say a gray suit.

9 THE COURT: Indicating the defendant for the  
10 record, greenish gray suit.

11 Q. What did you observe the defendant doing at that time?

12 A. For about five minutes I observed the defendant take  
13 out a folding table, place it on a public sidewalk and started  
14 taking out music CDs and placing it on top of the table. I then  
15 seen the defendant come around the table, stand behind the table  
16 and rearranging the CDs face up to people walking by.

17 Q. How was he arranging them?

18 A. He was taking them out of a box with the CD facing up,  
19 the cover, basically the cover showing and placing it on top of  
20 the table.

21 Q. How long did you observe the defendant from inside the  
22 van?

23 A. From inside the van approximately five minutes.

24 Q. Now was anyone else ever behind the folding table or  
25 ever touching -- withdrawn.

P.O. MCCLEAN - DIRECT - PEOPLE

1 Was anyone else ever behind the folding table at this  
2 time?

3 A. No, just the defendant.

4 Q. Did anyone ever rearrange the disc or touch the discs?

5 A. No.

6 Q. Did there come a time when you exited your van?

7 A. Yes, after observing the defendant for five minutes  
8 placing the CDs on the table we did approach him.

9 Q. Just to backtrack a little bit, did you see passersby  
10 while you observed the defendant from inside the van?

11 A. Yes, people were passing by.

12 Q. Did you see them glancing at the CDs for sale?

13 A. I seen them look but nobody stopped right in front the  
14 table. They did look at the CDs while he was arranging them.

15 Q. Did you see the defendant initiate any passerby as in  
16 conversation or anything else?

17 A. No.

18 Q. What happened as you approached the defendant after  
19 you exited your van?

20 A. We approached him behind the table. We asked him does  
21 he have a vending license, which he then stated no, he does not.  
22 After that I looked at the music CDs and observed the CDs on top  
23 of the table and also observed that the CD was clear, CD case  
24 with an insert which was photocopied.

25 Q. I will stop you right there.

P.O. MCCLEAN - DIRECT - PEOPLE

1           So you stated previously that the defendant never  
2 produced --

3           A.   No, he did not.

4           Q.   -- a vending license?

5           A.   No, he did not.

6           Q.   What happened after he failed to produce a general  
7 vendors license?

8           A.   That's when I proceeded to examine the CDs that were  
9 on the table.

10          Q.   Have you received any training regarding parodical CDs  
11 and recordings?

12          A.   Yes.

13          Q.   Can you please describe that?

14          A.   It's called peddler training. We have different  
15 labels come to an office to sit down and explain to us what is  
16 the proper CD.

17          Q.   Excuse me, by labels do you mean the Recordings  
18 Association of America?

19          A.   Yes.

20          Q.   Continue.

21          A.   And they explained to us what is a pirated CD and what  
22 is not.

23          Q.   Can you please explain how would you determine a  
24 parodical CD from say a CD produced legitimately by a recording  
25 label?

P.O. MCCLEAN - DIRECT - PEOPLE

1           A.    Usually a CD that is produced by a recording label has  
2 a plastic wrapping around the CD. It has the artist name on the  
3 CD. Usually it has the company's name, the company's address,  
4 on the back of the CD has a bar code, universal price code.  
5 When you open the CD the CD itself usually has writing on it.  
6 It's not a clear CD, it usually has color on it, either the  
7 artist name or like a picture or the insert itself it not a  
8 photocopy. It actually has the picture, it has the logo. It  
9 has the artist name, who produced it, everything is written down  
10 on the insert. Usually it's a thick plastic paper, it's not  
11 like a photocopy.

12           Q.    Have you had an opportunity in your public life or  
13 civilian life to perhaps look and examine legitimately produced  
14 musical CDs?

15           A.    Yes.

16           Q.    Have you made arrests involving parodical CDs prior to  
17 this incident?

18           A.    Yes.

19           Q.    About how many?

20           A.    Prior to this incident, about ten.

21           Q.    Now, getting to CDs involved in this incident, can you  
22 please describe them?

23           A.    Okay. The CD was a clear case CD, front was clear,  
24 had an insert which was photocopied.

25           Q.    How could you tell it was photocopied?

P.O. MCCLEAN - DIRECT - PEOPLE

1           A.    Because it was faded, the colors was like bleeding  
2   into each other. It was fading. On top it has the artist face.  
3   On the back it was a white clear sheet. The back of the CD was  
4   black, had no bar code. Also didn't have no writing on the CD.  
5   The CD was a clear CD. There was no writing there. There was  
6   no company name on the CD or the cover, no logos, nothing like  
7   that, just the artist faces were on the cover of the insert.

8           Q.    Can you perhaps name any of these artists that you  
9   saw?

10          A.    The artist I saw was Jay Z. They had Little Wayne and  
11   they had Jim Jones on it.

12          Q.    Were these all on the same disc?

13          A.    Yes.

14          Q.    Is there anything else you would like to add about the  
15   CDs you examined that day?

16          A.    Other than the CD itself was clear. It was no writing  
17   on it, that was about it.

18          Q.    Based on your training and experience both  
19   professional and in your civilian life, did you form an opinion  
20   as to whether or not the CDs you examined were in fact  
21   legitimate?

22          A.    No, they were not legitimate.

23          Q.    Also, just to make the record clear, on any part of  
24   the CD or disc did you see the names or addresses of the  
25   manufacturers?



P.O. MCCLEAN - DIRECT - PEOPLE

1 A. No, not at all.

2 Q. Of the performers?

3 A. No.

4 Q. Going back to your unit of command, are unlicensed  
5 vendor areas a focus for your unit?

6 A. Yes, that's one of our many focuses we have.

7 Q. So it's fair to say that you deal with them on a  
8 semi-regular basis?

9 A. Yes.

10 Q. Have you undergone any training related to unlicensed  
11 vendors?

12 A. Yes.

13 Q. Can you please describe that training?

14 A. Basically it showed us how far apart if they are  
15 legitimate vendors with a license from New York, they actually  
16 show us the license. How it looks. It's actually a tax  
17 license. It's basically saying they are paying taxes for the  
18 merchandise and they are selling and they have a right to sell  
19 it on the sidewalk. They can't have it a certain feet from the  
20 curb. It has to be a certain distance from the store and that's  
21 about it.

22 Q. Where was the defendant's table located?

23 A. The table was right against the curb, on the sidewalk  
24 but right up against the curb. It has to be approximately 12 or  
25 15-inches away from the curb. It was right on it.

P.O. MCCLEAN - DIRECT - PEOPLE

1 Q. Can you state the address for that?

2 A. It was opposite -- I was at 760 Broadway, so it was  
3 opposite 760 Broadway.

4 Q. What items selling on the street would you need a  
5 general vendors license to be selling?

6 A. Mostly clothes. You can also sell your own personal  
7 music. You cannot sell music that has a label, basically  
8 labeled music. You can sell your own personal music.

9 Q. By your own personal music, what do you mean by that?

10 A. Meaning you are an artist and it's your music that you  
11 made. It's not under no music label. So you can sell your own  
12 personal music, but you cannot sell music that is under a label.  
13 You can also sell like umbrellas. It's a variety of things you  
14 can sell on the street.

15 Q. After you examined the defendant's wares, what  
16 conclusions did you come to as to whether he was required to  
17 have a general vending license?

18 A. I looked at the music I noticed that it had different  
19 artists on the music by the faces and I noticed that they were  
20 pirated by just looking at it. I can tell it was pirated.

21 Q. Did the defendant make any statements to you?

22 A. Not that I recall, no, other than saying he doesn't  
23 have a vending license.

24 MR. DEPAOLA: Can I draw your attention, I would  
25 actually like to refresh the witness' recollection with his

P.O. MCCLEAN - DIRECT - PEOPLE

1 own supporting deposition, your Honor?

2 MR. MEADOWS: Your Honor, I will object and say  
3 it was asked and answered. Officer stated he does not  
4 recall, he did not give any statement.

5 MR. DEPAOLA: I believe we are --

6 THE COURT: Refresh his recollection.

7 MR. DEPAOLA: Refresh his recollection.

8 THE COURT: That's fine, just tell us what you  
9 are refreshing it with.

10 MR. DEPAOLA: This is the supporting deposition  
11 that the officer filled out, if I may approach.

12 THE COURT: Show it to defense.

13 MR. MEADOWS: I have this, yes.

14 Q. If you can please refer to the statement section.  
15 Please inform the court whether that refreshes your  
16 recollection.

17 A. Yes.

18 Q. Now I want to repeat the question.

19 Do you recall the defendant making any other  
20 statements that day to you?

21 A. Yes.

22 Q. Can you please tell the court what that was?

23 A. He stated he brought the CDs from a DJ.

24 Q. And when did this statement occur?

25 A. It occurred -- can I check again?

P.O. MCCLEAN - DIRECT - PEOPLE

1 Q. Please refresh your recollection.

2 A. At 3:05 p.m.

3 Q. Was this prior to the arrest of the defendant?

4 A. Yes.

5 Q. Did you have your guns drawn as he was making the  
6 statement?

7 A. No.

8 THE COURT: Did you listen to this music at all?

9 THE WITNESS: Did I personally, no.

10 THE COURT: The CDs.

11 THE WITNESS: No.

12 THE COURT: You don't know if it was a DJ mix or  
13 a song by Little Wayne or Jim Jones? You don't know if it  
14 was individual songs or you don't know if it was a mix  
15 tape?

16 THE WITNESS: By the cover itself it says it was  
17 a mix tape, but me listening to it, no I didn't. But the  
18 cover did say it was a mix tape.

19 THE COURT: The cover said mix tape?

20 THE WITNESS: Right, mix CD.

21 THE COURT: You would take that to mean what?

22 THE WITNESS: That the CD itself has different  
23 artists on it.

24 THE COURT: In what way?

25 THE WITNESS: Music like songs.

P.O. MCCLEAN - DIRECT - PEOPLE

1 THE COURT: But when it says different artists,  
2 what do you consider a mix tape, like one song, one track  
3 is by Jay Z?

4 THE WITNESS: I take that as each track will be a  
5 different artist.

6 THE COURT: Could it also mean it could be a DJ  
7 mix of combined songs, a mix tape?

8 THE WITNESS: Yes, could also mean that too.

9 MR. DEPAOLA: Your Honor, if you could please  
10 define what you mean by a DJ mix?

11 THE COURT: He's the one that said it. I am just  
12 asking questions.

13 What do you mean a DJ mix?

14 THE WITNESS: He stated he brought it from a DJ.  
15 What do I know personally?

16 THE COURT: What do you know is a DJ mix?

17 THE WITNESS: DJ mix is usually a DJ putting  
18 together one or two songs, three songs together into one  
19 track.

20 MR. DEPAOLA: No further questions, your Honor.

21 MR. MEADOWS: May I proceed?

22 THE COURT: Go ahead.

23 MR. MEADOWS: I will be very brief.

24 CROSS-EXAMINATION

25 BY MR. MEADOWS:

P.O. MCCLEAN - CROSS - DEFENSE

1 Q. You are a police officer. Good afternoon.

2 A. How are you doing.

3 Q. How are you doing.

4 Prior to joining the force, one of the first things  
5 was police academy, correct?

6 A. Yes.

7 Q. Do you remember them telling you, you have to take  
8 meticulous notes?

9 A. Yes.

10 Q. Do you know what meticulous notes are?

11 A. Yes.

12 Q. What are they?

13 A. You are taking notes from facts that as you see you  
14 write them down.

15 Q. Besides writing them, were you ever taught to do  
16 anything else?

17 A. Besides writing down the notes?

18 Q. Writing notes.

19 A. Memorializing.

20 Q. Anything in terms of documenting it with photographs?

21 A. It depends on what it is.

22 Q. What about maintaining the evidence?

23 A. Yes, you have to voucher the evidence.

24 Q. Vouchering evidence. Fair enough.

25 Do you happen to know how many CDs were there on this

P.O. MCCLEAN - CROSS - DEFENSE

1 case directing your attention to August 13, 2010 as the People  
2 stated?

3 A. I vouchered 33 CDs.

4 Q. Do you know what happened to the CDs?

5 MR. DEPAOLA: Objection, your Honor. People are  
6 not presenting any evidence, any physical evidence.

7 THE COURT: Overruled.

8 Q. If you know, do you know what happened to those CDs?

9 A. Yes.

10 Q. What happened to them?

11 A. They were destroyed.

12 Q. Do you know why they were destroyed?

13 A. Do I know why?

14 Q. Yes.

15 A. No, I don't know why.

16 Q. Did you take any photographs of those CDs in question?

17 A. No.

18 Q. Now, you mentioned that my client, Mr. Alford, was too  
19 close to the curb for purposes of a vendor, correct?

20 A. Correct.

21 Q. Can you repeat, excuse me, where was he in terms of  
22 how close was he to the curb?

23 A. He was right on the curb.

24 Q. Did you document that anywhere?

25 A. No because we didn't charge him with that.



P.O. MCCLEAN - CROSS - DEFENSE

1 Q. How do you remember that?

2 A. I remember because I remembered.

3 Q. You have been on the force for five years?

4 A. Yes.

5 Q. You made how many arrests?

6 A. From my career?

7 Q. In your career?

8 A. 250.

9 Q. Do you remember each and every arrest?

10 A. No.

11 Q. Why is that?

12 MR. DEPAOLA: Objection, your Honor.

13 THE COURT: Objection, sustained. I get it.

14 Q. You also mentioned that you made ten arrests dealing  
15 with vendors?

16 A. Correct.

17 Q. Now, in this area are there other vendors that sell  
18 goods?

19 A. Yes.

20 Q. On that block are there other vendors that sell goods?

21 A. Yes.

22 Q. Did you see any other vendors on that day?

23 A. Yes.

24 Q. How close were they to my client at the time in  
25 question?

## P.O. MCCLEAN - CROSS - DEFENSE

1 A. It was a space between I would say about two or three  
2 feet from each other.

3 Q. Did you go over to the other people on that day?

4 A. No.

5 Q. Why is that?

6 A. Because most of them have a vending license.

7 Q. Did you ask them to see their vending license?

8 A. I know them by face.

9 Q. In the past you have asked at one point?

10 A. Correct.

11 Q. That area for them it was legal for them to vend  
12 goods, correct?

13 A. Correct.

14 Q. And you never took any photographs or -- actually  
15 asked and answered. I am sorry about that.

16 You did state to the court you have no idea what was  
17 on those CDs?

18 A. Correct.

19 Q. It's your judgment call based on your training that  
20 they were, in fact, pirated, correct?

21 A. Correct.

22 Q. And it could also be my client's own music, correct?

23 A. From looking at the cover -- or how would I know it's  
24 his music.

25 Q. How would you not no it's his music?

P.O. MCCLEAN - CROSS - DEFENSE

1 A. If it's on the cover, his name was not on the cover.

2 Q. But you are not certain what was actually on the CDs?

3 A. Correct.

4 Q. They could have been blank, correct?

5 A. Correct.

6 Q. You recall this event, correct?

7 A. Yes.

8 Q. Why?

9 A. I looked over my notes.

10 Q. Did you speak with the People, did you speak to the  
11 assistant district attorney prior to today regarding this case?

12 A. Yes.

13 Q. How many times have you spoken with the ADA?

14 A. Prior to today?

15 Q. Yes.

16 A. Once.

17 Q. How long did you go over prepping this case?

18 A. We didn't.

19 Q. You did not?

20 A. No.

21 Q. You have not prepped this case at all?

22 A. Today.

23 Q. But in the past you have?

24 A. No.

25 Q. It's your testimony that you never prepared for this

P.O. MCCLEAN - CROSS - DEFENSE

1 case?

2 A. I just said today I prepared for it today.

3 Q. Fair enough. Did my client give you any other  
4 statements?

5 A. Not that I recall, no.

6 Q. Do you actually recall my client saying that he  
7 brought this from a DJ or you just remember after seeing your  
8 note but you are --

9 Do you actually independently recall my client saying  
10 he got these CDs from a DJ or do you just remember writing that  
11 statement down?

12 A. I remember if I wrote it down he said it.

13 Q. But you don't actually recall him saying it, correct?

14 A. Today, no.

15 Q. Then?

16 A. Then if I wrote it down that means he said it to me.

17 Q. You don't recall my client saying that?

18 A. Today, no, I don't recall.

19 Q. Do you recall what my client was wearing on that day?

20 A. No.

21 Q. Do you recall the weather conditions?

22 A. Nice.

23 Q. How do you recall it was nice?

24 A. Because that would stand out if it was raining.

25 Q. You would have written down that it was raining on

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1 that day?

2 A. I wouldn't have written it down, no.

3 Q. How do you know?

4 MR. DEPAOLA: Objection as to what he would have  
5 written down, your Honor.

6 THE COURT: It's cross-examination, overruled.

7 Q. Any reason why you didn't write down my client was in  
8 violation being too close to the curb?

9 A. We didn't charge him with that, there is no reason to.

10 Q. I understand you always would not write it down if a  
11 person was in violation of a law you wouldn't write that down on  
12 your notes to refresh at a later time?

13 A. I remember now as you said it. I don't have to write  
14 it down because I remembered.

15 Q. Do you recall exactly where this incident occurred?

16 A. Yes, across the street from 760 Broadway.

17 Q. Is that in the jurisdiction of your police department?

18 A. We are New York City Police Department so.

19 Q. Is that in the jurisdiction?

20 A. Of my precinct, no. Across the street from 760  
21 Broadway?

22 Q. Yes.

23 A. No, it's not in my precinct, but we can cover up to  
24 three blocks into another precinct.

25 MR. MEADOWS: No further questions.

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1 THE COURT: All right. I want to keep in mind  
2 People we are going right into a trial. If you want to  
3 expand on some things during the direct testimony I am  
4 giving you an opportunity to ask any further questions.

5 MR. DEPAOLA: May I take a short recess? Two  
6 minutes, your Honor.

7 THE COURT: Okay, five minutes.

8 \* \* \*

9 COURT OFFICER: Recalling 6, Douglas Alford.

10 THE COURT: Are we reducing this?

11 MR. MEADOWS: Yes, your Honor. It's my  
12 understanding I believe the People's understanding that  
13 this case had been reduced.

14 THE COURT: But just in case.

15 MR. MEADOWS: Yes, just in case.

16 THE COURT: I believe it was at one point. Let's  
17 just officially I will do it again. So we are reducing?

18 MR. DEPAOLA: We are reducing it to the attempted  
19 charge for the failure to disclose origins of recording.

20 THE COURT: People, can I see your complaint? Do  
21 you have an extra copy?

22 So we will reduce.

23 We will proceed.

24 MR. MEADOWS: Yes, your Honor. I believe that we  
25 need to agree, we just have to read the stipulation into

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1 the record.

2 THE COURT: Okay.

3 MR. DEPAOLA: Your Honor, the People would like  
4 now to read into the record the stipulation between the  
5 people and the defendant. The parties have entered into  
6 the following stipulation in connection with the testimony  
7 of John C. Cassillo:

8 If John C. Cassillo were called to testify at  
9 this trial by the prosecution he would testify as follows:  
10 He is the regional director of the Recording Industry  
11 Association of America, the RIAA. He represents the RIAA  
12 and that the RIAA is the trade group that represents the  
13 U.S. music industry. That the RIAA member companies  
14 create, manufacturer and distribute 85 percent of all  
15 legitimate sound recordings produced and sold in the United  
16 States.

17 That he has received training from qualified  
18 members of the RIAA staff on matters relating to music  
19 piracy, counterfeiting and bootlegging of music. Including  
20 but not limited to the identification of unauthorized sound  
21 recordings, manufacturing processes and the applicability  
22 of relevant state and federal laws. That he is familiar  
23 with the operation of illegitimate manufacturing and has  
24 specialized knowledge in the field of identification of  
25 unauthorized sound recordings.



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1           That this court would have declared John C.  
2           Cassillo an expert in the field of legitimate and parodical  
3           recordings. The requirements of the former and the  
4           qualities of the latter.

5           He would have testified that based on his  
6           training and experience it is his expert opinion that  
7           legitimate music produced, manufactured and distributed by  
8           member companies including Universal music, Sony, Warner  
9           and EMI music do not include compilation cassette disc  
10          recordings also known as CDRs containing music from  
11          multiple artists and owned by multiple music labels.

12          That the artists known as Jim Jones, Jay Z and  
13          Little Wayne have created music owned by member labels and  
14          appear on cassette discs, CDs. Member companies have not  
15          compiled CDs or DVDs for manufacturing or distribution on a  
16          single disc.

17          Furthermore, that member labels do not  
18          manufacturer music on CDRs. That legitimate music is  
19          manufactured on CDs and replicated plans where the sound is  
20          pressed or molded into the CD.

21          Illegal music is often created through digitally  
22          burning music onto recordable CDRs. These CDRs are often  
23          distributed in thin plastic cases or vinyl CD, add some  
24          artwork, input the true name or the address of the  
25          manufacturer.

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1           Whereas legitimate CDs manufactured by member  
2           labels always include artwork, insert and booklet. And  
3           also include the title track on the reverse side of the  
4           case and often on the CD itself, along with the true name  
5           and address of the manufacturer of the CD.

6           He would also testify that New York State law  
7           requires music recording to disclose the name and address  
8           of the manufacturer. He would also have testified further  
9           that it is his expert opinion that CDRs are photocopy  
10          inserts depicting artists such as Jay Z, Little Wayne and  
11          Jim Jones with no listing of the title of the tracks, with  
12          no description of manufacturer's name and address would be  
13          the result of an illegitimate produced parodical recording.

14          He would also have testified that he has no  
15          knowledge of whether the defendant, Douglas Alford, was in  
16          actual or constructive possession of any legal or illegal  
17          CDs, CDRs or DVDs on or about 3:05 p.m. on August 13, 2010  
18          at the southwest corner of Broadway and Marcus Garvey  
19          Boulevard in the County of Kings State of New York.

20                 THE COURT: That's it.

21                 MR. MEADOWS: Yes, your Honor. That's regarding  
22                 the stipulation. I don't know if the People are calling  
23                 witnesses.

24                 THE COURT: Should we call officer McClean back  
25                 in?

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1 MR. DEPAOLA: One second, Judge.

2 No further questions, Judge.

3 THE COURT: Okay.

4 MR. DEPAOLA: People rest their case.

5 MR. MEADOWS: Application, your Honor.

6 THE COURT: Yes.

7 MR. MEADOWS: At this time I would like you to  
8 move for trial order dismissal. Mainly that the People  
9 failed to establish -- excuse me, establish prima facie  
10 case beyond a reasonable doubt. Namely, that they failed  
11 to reach every element pertaining to failure to disclose  
12 the origin of recording in the second degree.

13 As Court knows the evidence was destroyed in this  
14 case. The People don't actually have any proof whatsoever  
15 whether these CDs existed, whether these CDs were  
16 counterfeit, legitimate, if it was music on them. If it  
17 was blank CDs. There is no information. There is no  
18 evidence whatsoever except for an officer's testimony  
19 stating that he saw jackets and sleeves of DVDs depicting  
20 artists but he does not have any other independent  
21 recollection or that he has taken any notes, any  
22 photographs or for that matter that the People -- excuse  
23 me, prior to the destruction of the evidence that there  
24 were no photographs made proving that these were pirated  
25 CDs. I believe that element falls on the People and they

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1 failed to establish that.

2 And in terms of the unlicensed general vendor  
3 under Administrative Code 20.453, the People failed to  
4 prove that my client was required to possess a general  
5 vendor's license. The law here in New York City, your  
6 Honor, is that in certain areas, if it's a place where  
7 other vendors do business. The officer did state that he  
8 did witness other vendors doing business on that day in  
9 that corner and they have done. So he's familiar with the  
10 people in that area. That's a legitimate area where one  
11 can be a vendor.

12 The honest is on the People to prove that my  
13 client was not compliant with how close he was to the curb.  
14 The reason why I bring that up on direct examination was  
15 because of the fact that without the People proving that my  
16 client did not comply with what other vendors do, my client  
17 was there legitimately. He did not need to possess a  
18 vendors license. He was selling CDs that were protected  
19 under the first amendment.

20 And for all those reasons, your Honor, I believe  
21 a trial order of dismissal would be the correct thing to do  
22 at this time.

23 THE COURT: People.

24 MR. DEPAOLA: Your Honor, the People would also  
25 like to submit to the court the law under the

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1 administrative code. Judge, the law in New York requires  
2 that each general vendor shall carry his or her license on  
3 his or her person and it shall be exhibited upon demand to  
4 any police officer. The vendors license shall contain his  
5 own name, his or her license number and a non-removable  
6 photograph of the licensed vendor.

7 The defendant produced no such license. He  
8 stated that he had no such license and the mere fact that  
9 other vendors were present, means nothing. He's still  
10 required to have a license as the officer noted by the fact  
11 that he saw the other vendors who had their license and he  
12 knew them by face.

13 THE COURT: Let me ask you this because you are  
14 giving me the 20-453 when the license is required, but  
15 under the first amendment, correct, you can sell items  
16 without having a license?

17 MR. DEPAOLA: Those items are limited to books,  
18 written materials and paintings and even your own music CDs  
19 but music that you purchased from someone else and are then  
20 selling, then it would not be.

21 MR. MEADOWS: Again, the People have not --

22 THE COURT: You made your argument that's why I  
23 am asking him this question.

24 MR. DEPAOLA: We have the defendant's own  
25 statement that he brought them from someone else,

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1           therefore, proving prima facie at least that he was not  
2           selling his own music.

3                       And as for the other charges, failure to disclose  
4           the origin of the recording in the second degree, the  
5           officer examined the CDs. He has prior training. He saw  
6           the photographs and likenesses of prominent artists in the  
7           recording industry present on the cover of the CDs. And  
8           usually people don't put the faces of other people on their  
9           own music.

10                      Furthermore, selling other people's music he is  
11           required to both list the addresses and names of the  
12           performers and the manufacturers of such music, which he  
13           failed to do as described by officer McClean. Based on the  
14           stipulated to testimony non-parodical music always  
15           identifies names of the manufacturers and the performers on  
16           the back.

17                      THE COURT: But you do agree that the police  
18           officer testified that he doesn't know if they were blank  
19           CDs. He doesn't know anything that was on the music on the  
20           CD. He never listened to it; isn't that correct?

21                      MR. DEPAOLA: That is correct, Judge. It is the  
22           People's point that based on the defendant's own statement  
23           that he brought them from a DJ who ostensibly does not sell  
24           blank CDs and someone ostensibly would not sell blank CDs  
25           with covers or listing or showing other people's faces on

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1           them in the public.

2                   THE COURT: That's assuming that he listened to  
3           the CDs as well.

4                   The trial order dismissal is granted. Case is  
5           dismissed.

6                   MR. MEADOWS: Thank you, your Honor.

7   \*   \*   \*   \*   \*

8                   Certified to be a true and accurate record of the  
9           above proceedings.

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Alexis Fotiou  
Official Court Reporter